



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

FRIDAY, THE 2ND DAY OF MAY 2025 / 12TH VAISAKHA, 1947

WP(C) NO.7660 OF 2023

PETITIONER:

YESHWANTH SHENOY
AGED 44 YEARS
S/O.V.L.SHENOY, 'PRIYADARSHINI',
VEEKSHNAM ROAD,
ERNAKULAM,
PIN - 682018

BY ADV SRI YESHWANTH SHENOY(Party-In-Person)

RESPONDENTS:

- 1 THE BAR COUNCIL OF KERALA,
REPRESENTED BY THE HON.SECRETARY,
BAR COUNCIL, BAR COUNCIL BHAVAN,
HIGH COURT OF KERALA CAMPUS,
ERNAKULAM,
PIN - 682031
- 2 THE REGISTRAR-GENERAL
HIGH COURT OF KERALA,
ERNAKULAM,
PIN - 682031
- 3 LIVE LAW MEDIA PRIVATE LIMITED
REPRESENTED BY ITS MANAGING DIRECTOR AND HAVING
ITS REGISTERED OFFICE AT
3RD FLOOR, 41/3197



D-2 BHAGHEERATHA RESIDENCY,
BANERJEE ROAD,
ERNAKULAM,
PIN - 682018

BY ADVS.
SRI.PRANOY K. KOTTARAM
SRI.SUJIN S
SRI.N.N.SUGUNAPALAN (SR.) (S-678)
SRI.SIVARAMAN P.L (K/1457/2020)
SRI.GRASHIOUS KURIAKOSE (SR.) (G-256)
SRI.P.K.SURESH KUMAR (SR.) (S-793)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 08.04.2025, THE COURT ON 02.05.2025
DELIVERED THE FOLLOWING:



T.R. RAVI, J.

W.P(C) No.7660 of 2023

Dated this the 2nd day of May, 2025

JUDGMENT

The writ petition has been filed praying for the following reliefs:

"(i) To quash the Ext.P1 notice issued as being issued in violation of the statutory requirements under the Bar Council Rules and Regulations.

Or in the Alternative

(ii) direct the Respondent No.1 to comply with the statutory requirements on receipt of complaints against advocates in accordance with the Rules and Regulations of the Bar Council.

(iii) Direct the Respondent No.2 to inquire/ investigate and fix responsibility on the person responsible for having leaked the court documents to a 3rd person before the same even being served on the alleged contemnor.

(iv) Declare that the audio video recording of this Hon'ble Court be supplied to any interested person on the payment of reasonable fees for the



same."

2. The petitioner is an advocate enrolled with the Bar Council of Kerala and practising before the High Court of Kerala and in other courts across the country. On 14.2.2023, the Bar Council of Kerala issued Ext.P1 notice, which is styled as a show cause notice in a *suo motu* case, alleging violation of Standards of Professional Conduct and Etiquette. The notice refers to a letter dated 9.2.2023, from a learned Judge of this Court, alleging that the petitioner had shouted at the Court, harassed the Court, and compelled the Court to record his submission. The letter also says that the petitioner repeated the submissions in a louder voice and even stated that he would see that the Judge is expelled from the seat. The notice directs the petitioner to show cause within two weeks from the receipt of the notice as to why action should not be taken against him under Section 35 of the Advocates Act, 1961.

3. The petitioner states that he had filed an in-house complaint against the Judge before the Hon'ble Chief Justice of Kerala and that the learned Judge had also written to the



Hon'ble Chief Justice alleging that the petitioner had committed contempt of court. The petitioner sent Ext.P2 letter to the Bar Council requesting a copy of the letter received from the learned Judge, and it is stated in the writ petition that no copy was served on him till the filing of the writ petition. The petitioner submits that a *suo motu* action means an absence of a complainant/interested party, and if the action is based on a complaint, it cannot be treated as a *suo motu* action. It is contended that the Bar Council has not complied with the Rules that need to be followed on receipt of a complaint, before proceeding to issue a show cause notice. By Ext.P3, the petitioner has requested the Registrar General of this Court for a copy of the audio-video recording of the court proceedings mentioned in Ext.P1, which is also stated not to have been received.

4. The petitioner has stated that he had filed W.P © No.6912 of 2023, alleging that the number of cases listed before the learned Judge who has sent the letter dated 9.2.2023 to the Bar Council, has been restricted. It is stated



that unknown to the petitioner, *suo motu* proceedings under the Contempt of Courts Act, 1971 were initiated against the petitioner, and even before the notice of the case was served on the petitioner, the contents of the same were made available to the 3rd respondent, which is a Private Limited Company in the business of law reporting. The petitioner seeks an inquiry into the leaking of the documents by the Registry of this Court. The petitioner also contends that the complaint from the learned Judge enjoys no confidentiality under any Statute.

5. The 1st respondent has filed a counter affidavit contending that the writ petition is not maintainable, that Ext.P1 is only a show cause notice, that the copy of the complaint was forwarded to the petitioner, and he has filed his remarks before the 1st respondent and these aspects have already been recorded in the interim order passed by this Court on 7.3.2023. It is submitted that the State Bar Council has the power to initiate *suo motu* proceedings against an Advocate for misconduct under Section 35 of the Advocates



Act, 1961. Regarding the procedure followed, it is stated that on receipt of Ext.R1(a) letter, the matter was placed before the Bar Council meeting held on 11.02.2023, and it was unanimously decided to register the complaint and to call for remarks from the petitioner, which resulted in Ext.P1 notice. The copy of the reply submitted by the petitioner has been produced as Ext.R1(c). It is further stated that the Bar Council, after detailed consideration and deliberations, decided to proceed further under Section 35 of the Advocates Act, 1961, and passed a resolution, referring the matter to the Disciplinary Committee.

6. It is further stated that the Disciplinary Committee took the matter on its file, numbered the case as D.C Enquiry No.23 of 2023, and issued notice to the parties as per Rule 5 of Chapter I, Part VII of the Bar Council of India Rules, directing the petitioner to appear before the Disciplinary Committee on 12.08.2023. The petitioner appeared before the Disciplinary Committee and argued about the maintainability of the case. It was also pointed out that in Ext.R1(e) the date



of the complaint is stated wrongly, and the notice must be re-issued. A fresh notice in Form E-1 was thereafter issued to the petitioner on 13.09.2023. It is stated that even though a hearing had been scheduled, the same was adjourned on account of the interim order issued by this Court in this writ petition.

7. A reply affidavit has been filed by the petitioner to the counter affidavit filed by the State Bar Council stating that the letter from the learned Judge is not in the prescribed form, does not meet the requirement set by the Statute, and the Statute does not make any exception to any complaint written by Judges. It is stated that empowering the Bar Councils to initiate '*suo motu*' proceedings based on letters received by them will result in a witch hunt against advocates, which is not the intent of the Rules. It is further stated that at the time of issuance of Ext.P1 notice, and the deliberations stated to have been held on 11.2.2023, no contempt action had been initiated against the petitioner. It is contended that there could have been no deliberations on 11.2.2023 as there was insufficient



time to call for an extraordinary meeting, and that the details of the members who were present in the meeting are also not disclosed.

8. A counter affidavit has been filed on behalf of the 2nd respondent. Regarding the allegation of non-issuance of a certified copy of the order, it is stated that the counsel for the petitioner in CrI.M.A.No.1/2023 in R.P.(FC)No.189/2019, Advocate Aysha Abraham filed a copy application in the case on 09.02.2023 and received the copy on 06.03.2023. It is stated that the petitioner has not filed any copy application (Offline or Online) in R.P.(FC) No.189/2019 or any other case on 09.02.2023. As regards the in-house complaint filed by the petitioner, it is stated that the same was submitted for the consideration of the Hon'ble the then Chief Justice and His Lordship has minuted on 28.02.2023 that "Perused the letter. Does not require any in-house procedure". Regarding the request for a copy of the audio-visual recording of certain court proceedings, it is stated that the petitioner was informed vide High Court letter No.HCKL/2092/2023 A1



dated 15.03.2023 that the VC Court proceedings of Hon'ble Mrs.Justice Mary Joseph on 09.02.2023 were carried out through V-consol application and VC Court proceedings of Hon'ble Mr.Justice Anil K. Narendran and the Hon'ble Mr.Justice P.G.Ajithkumar on 19.11.2021 were carried out through Google Meet application and that recording option is not available in the versions of the Google Meet and the V-consol video conferencing applications used in the High Court. It is stated that the Court proceedings are not recorded through any other method. It is stated that, as of now, there is no practice in the High Court to record the Court proceedings, without any specific orders in that regard. Regarding the *suo motu* contempt case, it is stated that pursuant to the orders of the Hon'ble the Chief Justice on 21.02.2023, papers for the *Suo Motu Contempt Case (Crl.)* were drafted by the DI Section, High Court on 22.02.2023, that it was numbered as Contempt Case (Crl) No.2/2023 on 27.02.2023 and copy served on the learned Advocate General on the same day. The Contempt Case (Crl) No.2/2023 was listed on 28.02.2023, and notice was ordered in the case on the same day.



9. Regarding the allegation of leakage of news from the Registry, it is stated that the Registrar (Judicial) had conducted a discrete internal enquiry, and it was reported that no suspicious activities or involvement of the Officers and Staff of the High Court were found and that the alleged leakage of contents of the Court documents was not from the High Court Registry. The report of the Registrar (Judicial) has been marked as Ext.R2(e).

10. The petitioner has filed a reply affidavit to the counter-affidavit filed by the 2nd respondent. The petitioner has alleged that the disciplinary proceedings are a result of a conspiracy to eliminate the petitioner's voice against corruption in which State Law Officers are allegedly involved.

11. Heard Advocate Sri Yeshwanth Shenoy in person, Sri P.K.Suresh Kumar, Senior Advocate instructed by Sri Pranoy K. Kottaram for the 1st respondent and Sri N.N. Sugunapalan, Senior Counsel on instruction by Sri Sujin S., for the 2nd respondent.

12. The petitioner submitted that Section 35 of the



Advocates Act prescribes different modes for action based on a complaint and a *suo motu* action, that the two modes cannot be combined, and that a *suo motu* action cannot be initiated based on a complaint. It is further argued that, as per the rules, the complaint must be in the prescribed format and cannot be in the form of a letter addressed to the President, Bar Council of Kerala, particularly since there is no such person. Another argument raised is that in the absence of sufficient time even to convene an extraordinary meeting of the Bar Council, the notice issued on 14.2.2023, purportedly after the consideration by the Bar Council of the complaint, which is dated 9.2.2023, is not legally proper. It is contended that the requirement to call for the comments of the Advocate has also not been complied with. It is further stated that when the Bar Council considered the complaint on 11.2.2023, there were no contempt proceedings initiated against the petitioner, and there was no reason to issue the show cause notice even without contempt proceedings being initiated. The petitioner submits that the independence of the Bar will be compromised if such power is to be vested in the Bar Council of Kerala.



13. Sri P.K.Suresh Kumar, Senior Advocate appearing for the Bar Council, submitted that under Section 35(1) of the Advocates Act, the role of the Bar Council is minimal. It is submitted that the Bar Council is expected to refer the case for disposal by the Disciplinary Committee if a complaint is received or if the State Bar Council has reason to believe that any Advocate on its rolls has been guilty of professional or other misconduct. It is submitted that no hearing or notice is contemplated at the stage of Section 35(1), and it is for the Disciplinary Committee to fix a date of hearing and issue a show cause notice to the Advocate concerned and the Advocate General of the State. Reliance was placed on the judgment of the Hon'ble Supreme Court in **N.G. Dastane vs Shrikant S. Shivde & Anr. [(2001) 6 SCC 135]** to submit that the collocation of the words guilty of professional or other misconduct has been used with the intent to confer power on the Disciplinary Committee of the State Bar Council. It is for equipping the Bar Council with a pair of binoculars as well as a whip to be on the qui vive for tracing out delinquent advocates who transgress the norms or standards expected of them in



the discharge of their professional duties. The judgment says that when the Bar Council, in its wider scope of supervision over the conduct of advocates in their professional duties, comes across any instance of such misconduct, it is the duty of the Bar Council concerned to refer the matter to its Disciplinary Committee. The Court further held that the expression "reason to believe" is employed in Section 35 of the Act only for the limited purpose of using it as a filter for excluding frivolous complaints against advocates. If the complaint is genuine and if the complaint is not lodged with the sole purpose of harassing an advocate or if it is not actuated by *mala fides*, the Bar Council has a statutory duty to forward the complaint to the Disciplinary Committee. On the question of whether a show cause notice can be challenged, the counsel relied on the judgment in **The Secretary, Ministry of Defence & Ors. v. Prabash Chandra Mirdha [(2012) 11 SCC 565]**. The said judgment was one rendered in a case where a charge sheet issued on the initiation of disciplinary proceedings was challenged. The Hon'ble Supreme Court in paragraphs 11, 12, and 13 of the judgment held as



follows;

“**11.** Ordinarily a writ application does not lie against a chargesheet or show cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, chargesheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a chargesheet or show cause notice in disciplinary proceedings should not ordinarily be quashed by the Court. (Vide : State of U.P. v. Brahm Datt Sharma, AIR 1987 SC 943; Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh & Ors., (1996) 1 SCC 327; Ulagappa & Ors. v. Div. Commr., Mysore & Ors., AIR 2000 SC 3603 (2); Special Director & Anr. v. Mohd. Ghulam Ghouse & Anr., AIR 2004 SC 1467; and Union of India & Anr. v. Kunisetty Satyanarayana, AIR 2007 SC 906).

12. In State of Orissa & Anr. v. Sangram Keshari Misra & Anr., (2010) 13 SCC 311, this Court held that normally a chargesheet is not quashed prior to the conclusion of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that



correctness or truth of the charge is the function of the disciplinary authority.

(See also: Union of India & Ors. v. Upendra Singh, (1994) 3 SCC 357).

13. Thus, the law on the issue can be summarised to the effect that chargesheet cannot generally be a subject matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the chargesheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings."

14. It is argued that, when even a charge sheet cannot be stated to be adversely affecting the rights of a delinquent, a show cause notice can by no stretch of imagination be held as adversely affecting the rights of the person to whom it is addressed.



15. Reference was also made to the judgment of the Andhra Pradesh High Court in **K. Pushpa Leela v. Bar Council of State of A.P. & Anr. [AIR 1999 AP 88]**, wherein the Court had considered Section 35(1) of the Advocates Act. The Court, while considering the words "or otherwise" in the Section, held that it may include an oral complaint, or a complaint published in a newspaper by any affected person, or it may be a pseudonymous complaint. The Court held that the purpose behind employing such words is to protect and preserve professional ethics and etiquette among the legal practitioners and the Bar Councils, which are entrusted with the duty of effectively discharging such solemn object, must act firmly and must not hesitate to take cognizance of any complaints which are received. The Court held that even in a case where the Bar Council has reason to believe that there is some substance in the complaint which is given orally against any advocate on its roll, it is empowered under the provisions of Section 35 of the Act to register a case *suo motu* against such advocate and the power of taking *suo motu* cognizance is very much essential for the survival of the legal profession and to



maintain its nobility.

16. Sri N.N.Sugunapalan, Senior Advocate appearing for the High Court, submitted that concerning the request for the audio visual recording, there is no such material available to supply to the petitioner.

17. The petitioner in reply submitted that *suo motu* action cannot be taken in a case where the complainant is identifiable. It is submitted that only in the absence of a complaint, *suo motu* action can be taken. The counsel referred to the judgment of the Madras High Court in **Tanuja Rajan v. State [(2021) SCC OnLine Madras 2242]**. It is further argued that the absence of procedural rules initiating *suo motu* action can be dangerous. Reference was made to the decision of the Hon'ble Supreme Court in **In re: An Advocate [AIR 1989 SC 445]**. Paragraph 3 of the judgment reads as follows;

"3. At this juncture it is appropriate to articulate some basic principles which must inform the disciplinary proceedings against members of the legal profession in proceedings under Section 35 of the Advocates Act, read with the relevant Rules:



i) essentially the proceedings are quasicriminal in character inasmuch as a Member of the profession can be visited with penal consequences which affect his right to practise the profession as also his honour; under Section 35(3)(d) of the Act, the name of the Advocate found guilty of professional or other misconduct can be removed from the State Roll of Advocates. This extreme penalty is equivalent of death penalty which is in vogue in criminal jurisprudence. The Advocate on whom the penalty of his name being removed from the roll of Advocates is imposed would be deprived of practising the profession of his choice, would be robbed of his means of livelihood, would be stripped of the name and honour earned by him in the past and is liable to become a social outcast. A disciplinary proceeding by a statutory body of the Members of the profession which is statutorily empowered to impose a punishment including a punishment of such immense proportions is quasi-criminal in character:

(ii) as a logical corollary it follows that the Disciplinary Committee empowered to conduct the enquiry and to inflict the punishment on behalf of the body, in forming



an opinion must be guided by the doctrine of benefit of doubt and is under an obligation to record a finding of guilt only upon being satisfied beyond reasonable doubt It would be impermissible to reach a conclusion on the basis of preponderance of evidence or on the basis of surmise, conjecture or suspicion. It will also be essential to consider the dimension regarding mens rea.”

18. The Hon'ble Supreme Court has spelt out some basic principles, which must inform the disciplinary proceedings against members of the legal profession in proceedings under Section 35 of the Advocates Act, read with the relevant Rules. The Hon'ble Supreme Court was dealing with a case in which, after calling for the comments from the Advocate, the State Bar Council proceeded to record the evidence of the parties even without framing charges specifying the nature and content of the professional misconduct attributed to the Advocate.

CONSIDERATION:-

19. Regarding allegations levelled against the learned Advocate General, and allegations of malafides and



victimisation, this Court does not propose to go into the same in this writ petition, since the persons against whom malice is alleged are not parties to the writ petition.

20. Chapter V of the Advocates Act, 1961 deals with the conduct of Advocates and disciplinary proceedings that may be initiated against an advocate by the Bar Council of India or the State Bar Council. Section 35 of the Act reads as follows;

"35. Punishment of advocates for misconduct.—(1) Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.

(1A) The State Bar Council may, either of its own motion or on application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee and direct the inquiry to be made by any other disciplinary committee of that State Bar Council.

(2) The disciplinary committee of a State Bar Council shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the advocate concerned and to the Advocate-General of the State.



(3) The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following orders, namely:—

- (a) dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;
- (b) reprimand the advocate;
- (c) suspend the advocate from practice for such period as it may deem fit;
- (d) remove the name of the advocate from the State roll of advocates.

(4) Where an advocate is suspended from practice under clause (c) of sub-section (3), he shall, during the period of suspension, be debarred from practising in any court or before any authority or person in India.

(5) Where any notice is issued to the Advocate-General under sub-section (2), the Advocate-General may appear before the disciplinary committee of the State Bar Council either in person or through any advocate appearing on his behalf.

[Explanation. xxxx xxxx xxx]."

21. The power to initiate disciplinary action can be



either on receipt of a complaint or otherwise. What is required is that the State Bar Council should have reason to believe that an Advocate on its rolls has been guilty of professional or other misconduct. The next step is to refer the case to disposal to the Disciplinary Committee of the State Bar Council. The role of the State Bar Council ends there to some extent. The next stage of the proceedings is before the Disciplinary Committee. Part VII of the Bar Council of India Rules deals with disciplinary proceedings and review. Chapter 1 of Part VII lays down the procedure that is to be followed by the Disciplinary Committees of the State Bar Council and the Bar Council of India. Primarily, the procedure relates to action that is to be taken on the receipt of a complaint. Chapter 1A deals with a complaint and enquiry under Sections 35, 36, and 36B of the Act. Chapter I Rule A(1)(iv) says that no matter taken by a State Bar Council *suo motu* or arising on a complaint made under Section 35 of the Act shall be dropped, solely by reason of it having been withdrawn, settled or otherwise compromised, or that the complainant does not want to proceed with the enquiry. Chapter I Rule A(11)(iii)



also is in the same lines. Chapter I Rule A (17)(ii) says that the date of receipt of the complaint or date of initiation of the proceedings at the instance of the State Bar Council shall be the date on which the State Bar Council refers the case for disposal to its Disciplinary Committee under Section 35(1). A reading of the provisions of the Advocates Act and the Bar Council of India Rules would show that the proceedings can be initiated either by placing the complaint itself before the Disciplinary Committee or by a *suo motu* reference by the State Bar Council to the Disciplinary Committee.

22. A Constitution Bench of 7 Judges of the Hon'ble Supreme Court had considered the scope of disciplinary action under Chapter V of the Advocates Act, in **Bar Council of Maharashtra v. M.V. Dabholkar [(1975) 2 SCC 702]**. The issue that was considered by the Hon'ble Supreme Court was whether a State Bar Council can be treated as an aggrieved person as against orders passed by the Disciplinary Committee. The Hon'ble Supreme Court held that the State Bar Council is an aggrieved person and can prefer an appeal



against the order of the Disciplinary Committee. While holding so, the Hon'ble Supreme Court has observed that the very purpose of the constitution of the State Bar Councils and the Bar Council of India is to ensure that the standards of professional conduct and etiquette laid down by the Bar Council of India are observed and preserved. Paragraphs 24, 28, 29, and 30 of the judgment are extracted below;

"24. The scheme and the provisions of the Act indicate that the constitution of State Bar Councils and Bar Council of India is for one of the principal purposes to see that the standards of professional conduct and etiquette laid down by the Bar Council of India are observed and preserved. The Bar Councils therefore entertain cases of misconduct against advocates. The Bar Councils are to safeguard the rights, privilege and interests of advocates. The Bar Council is a body corporate. The Disciplinary Committees are constituted by the Bar Council. The Bar Council is not the same body as its Disciplinary Committee. One of the principal functions of the Bar Council in regard to standards of professional conduct and etiquette of advocates is to receive complaints against advocates and if the Bar Council has reason to believe that any advocate has been guilty of professional or other misconduct it shall refer the case for disposal to its Disciplinary Committee.



The Bar Council of a State may also of its own motion if it has reason to believe that any advocate has been guilty of professional or other misconduct it shall refer the case for disposal to its Disciplinary Committee. It is apparent that a State Bar Council not only receives a complaint but is required to apply its mind to find out whether there is any reason to believe that any advocate has been guilty of professional or other misconduct. The Bar Council of a State acts on that reasoned belief. The Bar Council has a very important part to play, first, in the reception of complaints, second, in forming reasonable belief of guilt of professional or other misconduct and finally in making reference of the case to its Disciplinary Committee. The initiation of the proceeding before the Disciplinary Committee is by the Bar Council of a State. A most significant feature is that no litigant and no member of the public can straightaway commence disciplinary proceedings against an advocate. It is the Bar Council of a State which initiates the disciplinary proceedings.

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28. Where a right of appeal to courts against an administrative or judicial decision is created by statute, the right is invariably confined to a person aggrieved or a person who claims to be aggrieved. The meaning of the words "a person aggrieved" may vary according to the context of the statute. One of the meanings is that



a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved". Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words "a person aggrieved" is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the background of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the Advocates Act is comparable to the role of a guardian in professional ethics. The words "persons aggrieved" in Sections 37 and 38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests. The test is whether the words "person aggrieved" include "a person who has a genuine grievance because an order has been made which prejudicially affects his interests". It has, therefore, to be found out whether the Bar Council has a grievance in respect of an order or decision affecting the professional conduct and etiquette.

29. The pre-eminent question is: what are the interests of the Bar Council? The interests of the Bar Council are



the maintenance of standards of professional conduct and etiquette. The Bar Council has no personal or pecuniary interest. The Bar Council has the statutory duty and interest to see that the rules laid down by the Bar Council of India in relation to professional conduct and etiquette are upheld and not violated. The Bar Council acts as the sentinel of professional code of conduct and is vitally interested in the rights and privileges of the advocates as well as the purity and dignity of the profession.

30. The interest of the Bar Council is to uphold standards of professional conduct and etiquette in the profession, which is founded upon integrity and mutual trust. The Bar Council acts as the custodian of the high traditions of the noble profession. The grievance of the Bar Council is to be looked at purely from the point of view of standards of professional conduct and etiquette. If any decision of the Disciplinary Committee of the Bar Council of India is according to the State Bar Council such as will lower the standards and imperil the high traditions and values in the profession, the State Bar Council is an aggrieved person to safeguard the interests of the public, the interests of the profession and the interests of the Bar."

23. In **N.G. Dastane (supra)**, the Hon'ble Supreme Court held that the expression "reason to believe" is employed



in Section 35 of the Act only for the limited purpose of using it as a filter for excluding frivolous complaints against Advocates. The Court further held that if the complaint is genuine and if the complaint is not lodged with the sole purpose of harassing an Advocate or if it is not actuated by *mala fides*, the Bar Council has the statutory duty to forward the complaint to the Disciplinary Committee.

24. In the instant case, since the Bar Council has no case that what has been referred is a complaint, the only question to be considered is whether there was "reason to believe". In **Bar Council of Maharashtra v. M.V. Dabholkar [(1976) 2 SCC 291]**, the Hon'ble Supreme Court considered the meaning and purport of the words "reason to believe and held as follows:

"4. The Bar Council of Maharashtra, by its Resolution No. 29, dated August 8, 1964 considered the complaint received from the High Court against one Kelawala and 15 other advocates among whom are those charged with professional misconduct and covered by the present appeals, under Section 35(1) of the Act, and, presumably having reason to believe that the



professional misconduct alleged required a further probe referred the case to its Disciplinary Committee. This procedure is in due compliance with Section 35(1) of the Act and, although the respondent in CA No. 1467/74 (A.K. Doshi) has contended that the resolution of the Bar Council does not ex facie disclose that it had reason to believe that the advocates involved were guilty of professional misconduct, we see no merit in it. The requirement of "reason to believe" cannot be converted into a formalised procedural roadblock, it being essentially a barrier against frivolous enquiries. It is implicit in the resolution of the Bar Council, when it says that it has considered the complaint and decided to refer the matter to the Disciplinary Committee, that, it had reason to believe, as prescribed by the statute."

25. In **Tanuja Rajan (supra)**, the Madras High Court was considering the question of granting anticipatory bail to an advocate who was implicated in a crime, for having violated the directions issued during the lockdown owing to the Covid pandemic, and under various other provisions of the IPC, for offences which followed, when the police officials took action. The Court had, during the process, directed the Bar Council of Tamil Nadu to place before it a status report regarding the actions that can be taken against advocates in such situations.



The petitioner relies on the observations made by the Court regarding the above status report, particularly regarding the initiation of *suo motu* action, even without a complaint. The Court has only expressed hope that *suo motu* action against erring professionals is initiated on coming to know of such incidents through digital/print media. The above judgment does not deal with the issue that is before this Court, except to the extent that this Court is also considering a case where the show cause notice issued on *suo motu* action is challenged. In **In Re An Advocate (supra)**, the Court was considering how the Disciplinary Committee is to consider the issue referred to it, and does not deal with the stage of reference of the matter by the Bar Council to the Disciplinary Committee.

26. In **Anjinappa v. Krishna Reddy [(2022) 17 SCC 625]**, the Hon'ble Supreme Court referred with approval the judgment of the Andhra Pradesh High Court in **Mangu Srihari v. Bar Council of State of A.P. [AIR 1983 AP 271]**. Paragraph 32 of the judgment is extracted below;



"32. On the role of the Bar Council of India, the Andhra Pradesh High Court in *Mangu Srihari v. Bar Council of State of A.P.* [, 1982 SCC OnLine AP 211 : AIR 1983 AP 271] has observed in paras 7 and 13 as under : (SCC pp. 273-74 & 276)

"7. In this context it must be noticed that the Advocates Act and the rules framed by the Bar Council of India are calculated to maintain high standard of professional conduct. Towards this end, it is provided that any allegation of professional misconduct should be enquired into by senior members of the said profession in whom professional body has reposed confidence electing them Rule 36-B of the Rules made under Advocates Act envisages expeditious disposal of any such complaint by prescribing a period of one year for the disposal of the complaint and laying down that if the enquiry is not so disposed of it would stand transferred to the Bar Council of India. Neither the Act nor the rules governing the disciplinary proceedings envisage stay of these proceedings having regard to the pendency of a criminal or civil case before any court or other authority. The complainant himself cannot withdraw the proceeding. Even the death of the



complainant does not terminate the disciplinary proceedings before the Bar Council. It is only a decision of the Disciplinary Committee that terminates the proceeding. Disposal of such a proceeding with utmost expedition is in the interests of the advocate whose professional integrity is under a cloud as a result of the initiation and pendency of the disciplinary proceedings.

13. ... A professional body, such as the Bar Council, has the exclusive jurisdiction to enquire into the allegations of misconduct against the members of the legal profession and it is enjoined to dispose of enquiry into such allegations expeditiously within a period of one year. That provision is intended not merely to clear the cloud cast on the particular advocate at the earliest but also intended to keep the noble profession itself clear of such members. Advocates owe a duty not only to their clients but to the court as well in the administration of law and justice. It is in the interest of the advocate and in particular that the proceedings conclude with the least possible delay. Merely because some civil or criminal proceeding is pending before a



court or Authority in respect of some issue common to that proceeding and the proceeding before the Disciplinary Committee of the Bar Council and stay of proceedings before the Bar Council would result in serious interference with the discharge of the statutory functions of the professional body unless allowing such proceeding to go on would result in miscarriage of justice. Such a step should in our view, be avoided."

We are in complete agreement with the view [*Mangu Srihari v. Bar Council of State of A.P.*, 1982 SCC OnLine AP 211 : AIR 1983 AP 271] taken by the Andhra Pradesh High Court."

27. The Court was considering the question of delay in the disposal of matters before the Disciplinary Committees. While doing so, the Court held that merely because some civil or criminal proceedings are pending before a court or authority in respect of some issue common to that proceeding and the proceeding before the Disciplinary Committee of the Bar Council, a stay of proceedings before the Bar Council is not called for since it would result in serious interference in the discharge of statutory functions of a professional body.



28. The following legal principles emerge from the above decisions.

- (i) The State Bar Council can initiate *suo motu* action on professional or other misconduct
- (ii) The expression "reason to believe" is employed in Section 35 of the Act only for the limited purpose of using it as a filter for excluding frivolous complaints against Advocates
- (iii) The requirement of "reason to believe" cannot be converted into a formalised procedural roadblock, it being essentially a barrier against frivolous enquiries.

29. In view of the law laid down by the Hon'ble Supreme Court in the above judgments, I do not find any illegality in the issuance of Ext.P1 notice by the Bar Council of Kerala, and the prayer to quash the same is rejected. Since the petitioner has already submitted his reply to Ext.P1 and has also responded to the notice issued by the Disciplinary Committee, the issue has become academic, so to speak. The prayers regarding audio-video recording cannot be considered



in the light of the fact that no such recording is available with the High Court. The Disciplinary Committee may, in the above circumstances, continue the proceedings from the stage at which it had been interdicted by interim orders issued in this writ petition, and take the case to its logical conclusion, in accordance with law. The finding regarding the correctness of Ext.P1 show cause notice will not, in any manner, prejudice or affect the contentions of the petitioner on the merits of the issue, and the petitioner is entitled to raise all the contentions available to him before the Disciplinary Committee.

The writ petition stands disposed of.

Sd/-

**T.R. RAVI
JUDGE**

dsn



APPENDIX OF WP(C) 7660/2023

PETITIONER'S EXHIBITS

- Exhibit P1 A COPY OF THE SHOW CAUSE NOTICE DATED
14 FEBRUARY 2023 ISSUED BY THE
RESPONDENT NO.1 TO THE PETITIONER
- Exhibit P2 A COPY OF THE LETTER DATED 27 FEBRUARY
2023 WRITTEN BY THE PETITIONER TO THE
RESPONDENT NO.1
- Exhibit P3 A COPY OF THE LETTER DATED 27 FEBRUARY
2023 WRITTEN BY THE PETITIONER TO THE
RESPONDENT NO.2
- Exhibit P4 A COPY OF THE NEWS REPORT DATED
1 MARCH 2023
- Exhibit P5 A COPY OF THE INTERIM ORDER DATED 28
FEBRUARY 2023 IN CON.CAS (CR) 2 OF
2023
- Exhibit P6 A COPY OF THE LETTER (THE DATE IN THE
LETTER IS INCORRECTLY ENTERED AS 7
JANUARY 2023) ADDRESSED TO THE
ATTORNEY GENERAL
- Exhibit P7 COUNTER AFFIDAVIT FILED BY THE
PETITIONER IN CON CAS (CRL) 2 OF 2023

RESPONDENTS' EXHIBITS

- Exhibit R1(a) A COPY OF THE LETTER FROM JUSTICE MARY
JOSEPH TO THE 1ST RESPONDENT DATED
09.02.2023.
- Exhibit R1(b) A COPY OF THE EXTRACTS OF THE MINUTES
OF THE MEETING OF THE 1ST RESPONDENT
DATED 11.02.2023



- Exhibit R1(c) A COPY OF THE REPLY SUBMITTED BY THE PETITIONER DATED 07.03.2023
- Exhibit R1(d) A COPY OF THE EXTRACT OF THE MINUTES OF THE MEETING OF THE 1ST RESPONDENT DATED 11.06.2023
- Exhibit R1(e) A COPY OF THE NOTICE ISSUED TO THE PETITIONER BY THE DISCIPLINARY COMMITTEE DATED 03.08.2023
- Exhibit R1(f) A COPY OF THE FRESH NOTICE ISSUED TO THE PETITIONER BY THE DISCIPLINARY COMMITTEE DATED 13.09.2023
- Exhibit R1(g) A COPY OF THE PROCEEDINGS SHEET OF THE DISCIPLINARY COMMITTEE
- Exhibit R2(a) TRUE COPY OF THE LETTER NO.HCKL/2092/2023 - A1 DATED 15/03/2023 ISSUED BY THE HIGH COURT TO THE PETITIONER
- Exhibit R2(b) TRUE COPY OF THE ACKNOWLEDGEMENT DATED 16/03/2023 PERTAINING TO THE RECEIPT OF LETTER NO.HCKL/2092/2023 - A1 DATED 15/03/2023
- Exhibit R2(c) TRUE COPY OF THE ORDER DATED 20/03/2023 IN THE ADMINISTRATIVE FILE DI-8/2092/2023-A1
- Exhibit R2(d) TRUE COPY OF REPORT DATED 22/03/2023 IN THE ADMINISTRATIVE FILE DI-8/2092/2023-A1
- Exhibit R2(e) TRUE COPY OF THE REPORT DATED 31/03/2023 OF THE REGISTRAR (JUDICIAL)